

AMENDED IN SENATE JUNE 22, 2006

AMENDED IN SENATE AUGUST 15, 2005

AMENDED IN SENATE JUNE 28, 2005

AMENDED IN SENATE JUNE 6, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1614

Introduced by Assembly Member Klehs Ruskin

February 22, 2005

~~An act to amend Sections 19521, 19734, and 19777.5 of, and to add Section 19739 to, the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately. to amend Section 17942 of the Revenue and Taxation Code, relating to limited liability companies, to take effect immediately, tax levy.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1614, as amended, ~~Klehs Ruskin. Taxation: tax amnesty program: penalties. Income taxes: limited liability companies: apportionment.~~

The Personal Income Tax Law requires every limited liability company subject to a specified tax to pay annually to this state a fee equal to specified amounts based upon total income from all sources reportable to this state. That law defines total income as gross income, as defined, plus the cost of goods sold, as specified.

This bill would, for taxable years beginning on or after January 1, 2001, provide that total income from all sources reportable to this state means gross income, as defined, plus the cost of goods sold, as

specified, derived from or attributable to this state within the meaning of specified provisions of the Corporation Tax Law relating to apportionment and allocation, as provided. This bill would make legislative findings and declarations regarding the necessity for the equitable treatment of limited liability companies.

This bill would take effect immediately as a tax levy.

~~Existing law requires the Franchise Tax Board to administer tax amnesty programs during the period beginning February 1, 2005, and ending on March 31, 2005, inclusive, or during any other 2-month period ending before June 30, 2005, as provided. Under existing tax laws, certain taxpayers are subject to a 50% amnesty penalty, which is an amount equal to 50% of the accrued underpayment interest payable for a specified period, if they have a balance due either on or after March 31, 2005, as provided.~~

~~This bill would eliminate the 50% amnesty penalty, as specified, if the taxpayer has filed a protective claim, as defined, and paid to the Franchise Tax Board an amount equal to at least 90% of the final liability amount. This bill would also eliminate that penalty for any tax liability that is related to a change in case law or regulations, as provided.~~

~~This bill would also create interest equalization for taxpayers that filed protective claims, as specified, in lieu of amnesty, so that any overpayment, as defined, would bear the same interest rate that is imposed on an underpayment, as defined, and would authorize the Chief Counsel of the Franchise Tax Board, or his or her designee, to review and abate all or any portion of the amnesty penalty, as provided.~~

~~This bill would also incorporate certain changes made to Section 19777.5 of the Revenue and Taxation Code by A.B. 911, if both bills are enacted, and certain other conditions are met.~~

~~This bill would declare that it is to take effect immediately as an urgency statute.~~

~~Vote: $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.~~

The people of the State of California do enact as follows:

- 1 *SECTION 1. The Legislature finds and declares that the*
- 2 *changes made by this act with respect to Section 17942 of the*
- 3 *Revenue and Taxation Code are necessary to provide for the*

1 *equitable tax treatment for limited liability companies in light of*
2 *the following:*

3 (a) *The California Limited Liability Act (Ch. 1200, Stats.*
4 *1994) authorized limited liability companies for the first time to*
5 *organize and register in the state. The Legislature was advised*
6 *that an increasing number of businesses would organize as*
7 *limited liability companies rather than corporations, resulting in*
8 *a decrease in income and franchise tax revenue. To offset the*
9 *loss in tax revenue, certain limited liability companies are*
10 *required to pay an annual fee based on total income from all*
11 *sources reportable to the state.*

12 (b) *The Legislature finds and declares that its intent in*
13 *adopting Section 17942 was to ensure that limited liability*
14 *companies pay a fair and appropriate amount to the State of*
15 *California, consistent with constitutional limits, and the changes*
16 *made by this act with respect to Section 17942 serve a public*
17 *purpose and are in furtherance of the public interest in the fair*
18 *taxation of limited liability companies doing business in the state*
19 *by applying the apportionment and allocation provisions to total*
20 *income for purposes of determining the amount of the limited*
21 *liability company fee.*

22 (c) *The Legislature further finds and declares that this act*
23 *serves a public purpose and sound tax policy by affording*
24 *equitable tax treatment to many taxpayers doing business in this*
25 *state with the expectation of paying a limited liability company*
26 *fee that is relative to the level of activity in the state.*

27 *SEC. 2. Section 17942 of the Revenue and Taxation Code is*
28 *amended to read:*

29 17942. (a) In addition to the tax imposed under Section
30 17941, every limited liability company subject to tax under
31 Section 17941 shall pay annually to this state a fee equal to:

32 (1) Nine hundred dollars (\$900), if the total income from all
33 sources reportable to this state for the taxable year is two hundred
34 fifty thousand dollars (\$250,000) or more, but less than five
35 hundred thousand dollars (\$500,000).

36 (2) Two thousand five hundred dollars (\$2,500), if the total
37 income from all sources reportable to this state for the taxable
38 year is five hundred thousand dollars (\$500,000) or more, but
39 less than one million dollars (\$1,000,000).

1 (3) Six thousand dollars (\$6,000), if the total income from all
2 sources reportable to this state for the taxable year is one million
3 dollars (\$1,000,000) or more, but less than five million dollars
4 (\$5,000,000).

5 (4) Eleven thousand seven hundred ninety dollars (\$11,790), if
6 the total income from all sources reportable to this state for the
7 taxable year is five million dollars (\$5,000,000) or more.

8 (5) This subdivision shall apply to taxable years beginning on
9 or after January 1, 1997.

10 (6) The changes made to this subdivision by the act adding
11 this paragraph shall apply to taxable years beginning on or after
12 January 1, 2001.

13 (b) (1) For purposes of this section, “~~total-income~~” *income*
14 *from all sources reportable to this state*” means gross income, as
15 defined in Section 24271, plus the cost of goods sold that are
16 paid or incurred in connection with the trade or business of the
17 taxpayer, *derived from or attributable to this state within the*
18 *meaning of Chapter 17 (commencing with Section 25101) of Part*
19 *11*. However, “~~total-income~~” *income from all sources reportable*
20 *to this state*” shall not include allocation or attribution of income
21 or gain or distributions made to a limited liability company in its
22 capacity as a member of, or holder of an economic interest in,
23 another limited liability company if the allocation or attribution
24 of income or gain or distributions are directly or indirectly
25 attributable to income that is subject to the payment of the fee
26 described in this section.

27 (2) In the event a taxpayer is a commonly controlled limited
28 liability company, the total income from all sources reportable to
29 this state, taking into account any election under Section 25110,
30 may be determined by the Franchise Tax Board to be the total
31 income of all the commonly controlled limited liability company
32 members if it determines that multiple limited liability companies
33 were formed for the primary purpose of reducing fees payable
34 under this section. A determination by the Franchise Tax Board
35 under this subdivision may only be made with respect to one
36 limited liability company in a commonly controlled group.
37 However, each commonly controlled limited liability company
38 shall be jointly and severally liable for the fee. For purposes of
39 this section, commonly controlled limited liability companies
40 shall include the taxpayer and any other partnership or limited

1 liability company doing business (as defined in Section 23101) in
2 this state and required to file a return under Section 18633 or
3 18633.5, in which the same persons own, directly or indirectly,
4 more than 50 percent of the capital interests or profits interests.

5 (c) The fee assessed under this section shall be due and
6 payable on the date the return of the limited liability company is
7 required to be filed under Section 18633.5, shall be collected and
8 refunded in the same manner as the taxes imposed by this part,
9 and shall be subject to interest and applicable penalties.

10 (d) *The changes made to this section by the act adding this*
11 *subdivision shall apply to taxable years beginning on or after*
12 *January 1, 2001.*

13 *SEC. 3. This act provides for a tax levy within the meaning of*
14 *Article IV of the Constitution and shall go into immediate effect.*

15 ~~SECTION 1. Section 19521 of the Revenue and Taxation~~
16 ~~Code is amended to read:~~

17 ~~19521. (a) The rate established under this section (referred to~~
18 ~~in other code sections as “the adjusted annual rate”) shall be~~
19 ~~determined in accordance with Section 6621 of the Internal~~
20 ~~Revenue Code, except that:~~

21 ~~(1) (A) For taxpayers other than corporations, the~~
22 ~~overpayment rate specified in Section 6621(a)(1) of the Internal~~
23 ~~Revenue Code shall be modified to be equal to the underpayment~~
24 ~~rate determined under Section 6621(a)(2) of the Internal Revenue~~
25 ~~Code.~~

26 ~~(B) In the case of any corporation, for purposes of determining~~
27 ~~interest on overpayments for periods beginning before July 1,~~
28 ~~2002, the overpayment rate specified in Section 6621(a)(1) of the~~
29 ~~Internal Revenue Code shall be modified to be equal to the~~
30 ~~underpayment rate determined under Section 6621(a)(2) of the~~
31 ~~Internal Revenue Code.~~

32 ~~(C) Except as provided in Section 19734, in the case of any~~
33 ~~corporation, for purposes of determining interest on~~
34 ~~overpayments for periods beginning on or after July 1, 2002, the~~
35 ~~overpayment rate specified in Section 6621(a)(1) of the Internal~~
36 ~~Revenue Code shall be modified to be the lesser of 5 percent or~~
37 ~~the bond equivalent rate of 13-week United States Treasury bills,~~
38 ~~determined as follows:~~

39 ~~(i) The bond equivalent rate of 13-week United States~~
40 ~~Treasury bills established at the first auction held during the~~

1 month of January shall be utilized in determining the appropriate
2 rate for the following July 1 to December 31, inclusive. Any such
3 rate shall be rounded to the nearest full percent (or, if a multiple
4 of one-half of 1 percent, that rate shall be increased to the next
5 highest full percent).

6 (ii) ~~The bond equivalent rate of 13-week United States~~
7 ~~Treasury bills established at the first auction held during the~~
8 ~~month of July shall be utilized in determining the appropriate rate~~
9 ~~for the following January 1 to June 30, inclusive. Any such rate~~
10 ~~shall be rounded to the nearest full percent (or, if a multiple of~~
11 ~~one-half of 1 percent, that rate shall be increased to the next~~
12 ~~highest full percent).~~

13 (2) ~~The determination specified in Section 6621(b) of the~~
14 ~~Internal Revenue Code shall be modified to be determined~~
15 ~~semiannually as follows:~~

16 (A) ~~The rate for January shall apply during the following July~~
17 ~~through December, and~~

18 (B) ~~The rate for July shall apply during the following January~~
19 ~~through June.~~

20 (b) (1) ~~For purposes of this part, Part 10 (commencing with~~
21 ~~Section 17001), Part 11 (commencing with Section 23001), and~~
22 ~~any other provision of law referencing this method of~~
23 ~~computation, in computing the amount of any interest required to~~
24 ~~be paid by the state or by the taxpayer, or any other amount~~
25 ~~determined by reference to that amount of interest, that interest~~
26 ~~and that amount shall be compounded daily.~~

27 (2) ~~Paragraph (1) shall not apply for purposes of computing~~
28 ~~the amount of any addition to tax under Section 19136 or 19142.~~

29 (e) ~~Section 6621(c) of the Internal Revenue Code, relating to~~
30 ~~increase in underpayment rate for large corporate~~
31 ~~underpayments, is modified as follows:~~

32 (1) ~~The applicable date shall be the 30th day after the earlier of~~
33 ~~either of the following:~~

34 (A) ~~The date on which the proposed deficiency assessment is~~
35 ~~issued.~~

36 (B) ~~The date on which the notice and demand is sent.~~

37 (2) ~~This subdivision shall apply for purposes of determining~~
38 ~~interest for periods after December 31, 1991.~~

1 ~~(3) Section 6621(c)(2)(B)(iii) of the Internal Revenue Code~~
2 ~~shall apply for purposes of determining interest for periods after~~
3 ~~December 31, 1998.~~

4 ~~(d) Section 6621(d) of the Internal Revenue Code, relating to~~
5 ~~the elimination of interest on overlapping periods of tax~~
6 ~~overpayments and underpayments, shall not apply.~~

7 ~~SEC. 2. Section 19734 of the Revenue and Taxation Code, as~~
8 ~~added by Section 11 of Chapter 226 of the Statutes of 2004, is~~
9 ~~amended to read:~~

10 ~~19734. (a) Notwithstanding any other provision of this~~
11 ~~chapter, if any overpayment of tax shown on an original or~~
12 ~~amended return filed under this article is refunded or credited~~
13 ~~within 180 days after the return is filed, no interest shall be~~
14 ~~allowed under Section 19340 on that overpayment.~~

15 ~~(b) (1) In the case of any corporation, for purposes of~~
16 ~~determining interest on overpayments attributable to payments~~
17 ~~made on or after January 1, 2005, and before April 1, 2005, that~~
18 ~~are not paid to satisfy an existing final liability, including final~~
19 ~~deficiencies and self-assessed amounts, the overpayment rate~~
20 ~~specified in Section 6621(a)(1) of the Internal Revenue Code~~
21 ~~shall be modified to be equal to the underpayment rate specified~~
22 ~~in Section 6621(a)(2) of the Internal Revenue Code.~~

23 ~~(2) The change in the overpayment rate, as described in~~
24 ~~paragraph (1) shall apply beginning on or after the date on which~~
25 ~~the overpayment or overpayments specified in paragraph (1)~~
26 ~~become effective.~~

27 ~~SEC. 3. Section 19739 is added to the Revenue and Taxation~~
28 ~~Code, to read:~~

29 ~~19739. (a) Any taxpayer who makes a payment on or after~~
30 ~~January 1, 2005, and before April 1, 2005, that is not applied to~~
31 ~~satisfy a liability, including final deficiencies and self-assessed~~
32 ~~amounts, for a taxable year beginning before January 1, 2003,~~
33 ~~that was final as of March 31, 2005, may request in writing the~~
34 ~~return of all or any portion of that payment.~~

35 ~~(b) Except in a case where the Franchise Tax Board~~
36 ~~determines that the collection of tax is in jeopardy, the Franchise~~
37 ~~Tax Board shall return to the taxpayer the amount requested~~
38 ~~pursuant to subdivision (a) within 45 days of receipt of the~~
39 ~~request.~~

~~(e) The return of a payment to a taxpayer pursuant to this section shall not prevent the imposition of a penalty under paragraph (2) of subdivision (a) of Section 19777.5, relating to penalties for amounts that become due and payable after the last day of the amnesty period specified in Section 19731.~~

~~SEC. 4. Section 19777.5 of the Revenue and Taxation Code is amended to read:~~

~~19777.5.— (a) There shall be added to the tax for each taxable year for which amnesty could have been requested:~~

~~(1) For amounts that are due and payable on the last day of the amnesty period, an amount equal to 50 percent of the accrued interest payable under Section 19101 for the period beginning on the last date prescribed by law for the payment of that tax (determined without regard to extensions) and ending on the last day of the amnesty period specified in Section 19731.~~

~~(2) For amounts that become due and payable after the last date of the amnesty period, an amount equal to 50 percent of the interest computed under Section 19101 on any final amount, including final deficiencies and self-assessed amounts, for the period beginning on the last date prescribed by law for the payment of the tax for the year of the deficiency (determined without regard to extensions) and ending on the last day of the amnesty period specified in Section 19731.~~

~~(b) The penalty imposed by this section is in addition to any other penalty imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part.~~

~~(c) This section does not apply to any amounts that are treated as paid during the amnesty program period under paragraph (4) of subdivision (a) of Section 19733 or paragraph (1) of subdivision (b) of Section 19733.~~

~~(d) (1) For purposes of computing the penalty imposed under paragraph (2) of subdivision (a), the amount of interest computed under Section 19101, that would otherwise be used to compute the penalty, shall be reduced by the amount of interest attributable to any amounts that become due and payable after the last day of the amnesty period specified in Section 19731, where those additional amounts are the result of a regulation, legal ruling of counsel (within the meaning of subdivision (b) of Section 11340.9 of the Government Code), or a published federal or California court decision that becomes final after the last day~~

1 of the amnesty period specified in Section 19731 that is
2 applicable for a taxable year beginning before January 1, 2003.

3 (2) The Franchise Tax Board shall implement this section in a
4 reasonable manner.

5 (e) The penalty imposed by paragraph (2) of subdivision (a) of
6 this section does not apply if the taxpayer paid, on or before the
7 last day of the amnesty period specified in Section 19731, at least
8 90 percent of the total tax for a taxable year. Total tax includes
9 any amounts that become due and payable after the last day of
10 the amnesty period.

11 (f) Article 3 (commencing with Section 19031), relating to
12 deficiency assessments, shall not apply with respect to the
13 assessment or collection of any penalty imposed by subdivision
14 (a).

15 (g) (1) Notwithstanding Chapter 6 (commencing with Section
16 19301), a taxpayer may not file a claim for refund or credit for
17 any amounts paid in connection with the penalty imposed in
18 subdivision (a), except as provided in paragraph (2).

19 (2) A taxpayer may file a claim for refund for amounts paid to
20 satisfy the penalty imposed under subdivision (a) on the grounds
21 that the failure of the Chief Counsel of the Franchise Tax Board,
22 or his or her designee, to abate the penalty, in whole or in part,
23 under the authority of subdivision (h) was an abuse of discretion.

24 (h) Only the Chief Counsel of the Franchise Tax Board, or his
25 or her designee, may abate all or any portion of a penalty
26 imposed under subdivision (a) if any one or more of the
27 following applies:

28 (1) The taxpayer demonstrates that the underpayment upon
29 which the penalty was based, or a portion thereof, was
30 attributable to the treatment of an item for which there was
31 substantial authority, within the meaning of Section 6662 of the
32 Internal Revenue Code and the regulations thereunder.

33 (2) The penalty imposed under this section, or a portion
34 thereof, is based on an underpayment resulting from a change or
35 correction by the Commissioner of Internal Revenue or other
36 officer of the United States and the taxpayer was first contacted
37 by the Internal Revenue Service concerning an examination of
38 the return after the last day of the amnesty period specified in
39 Section 19731.

1 ~~(3) If taking into account all the facts and circumstances, it is~~
2 ~~against equity and good conscience to hold the taxpayer liable for~~
3 ~~the penalty imposed under this section, or any portion thereof.~~

4 ~~(i) The State Board of Equalization's determination on an~~
5 ~~appeal from the action of the Franchise Tax Board on a claim for~~
6 ~~refund filed pursuant to paragraph (2) of subdivision (g) shall be~~
7 ~~limited to whether the failure of the Chief Counsel of the~~
8 ~~Franchise Tax Board, or his or her designee, to abate all or any~~
9 ~~portion of the penalty imposed under this section was an abuse of~~
10 ~~discretion.~~

11 ~~SEC. 4.5. Section 19777.5 of the Revenue and Taxation Code~~
12 ~~is amended to read:~~

13 ~~19777.5. (a) There shall be added to the tax for each taxable~~
14 ~~year for which amnesty could have been requested:~~

15 ~~(1) For amounts that are due and payable on the last day of the~~
16 ~~amnesty period, an amount equal to 50 percent of the accrued~~
17 ~~interest payable under Section 19101 for the period beginning on~~
18 ~~the last date prescribed by law for the payment of that tax~~
19 ~~(determined without regard to extensions) and ending on the last~~
20 ~~day of the amnesty period specified in Section 19731.~~

21 ~~(2) For amounts that become due and payable after the last~~
22 ~~date of the amnesty period, an amount equal to 50 percent of the~~
23 ~~interest computed under Section 19101 on any final amount,~~
24 ~~including final deficiencies and self-assessed amounts, for the~~
25 ~~period beginning on the last date prescribed by law for the~~
26 ~~payment of the tax for the year of the deficiency (determined~~
27 ~~without regard to extensions) and ending on the last day of the~~
28 ~~amnesty period specified in Section 19731.~~

29 ~~(3) For purposes of paragraph (2), Sections 19107, 19108,~~
30 ~~19110, and 19113 shall apply in determining the amount~~
31 ~~computed under Section 19101.~~

32 ~~(b) The penalty imposed by this section is in addition to any~~
33 ~~other penalty imposed under Part 10 (commencing with Section~~
34 ~~17001), Part 11 (commencing with Section 23001), or this part.~~

35 ~~(c) This section does not apply to any amounts that are treated~~
36 ~~as paid during the amnesty program period under paragraph (4)~~
37 ~~of subdivision (a) of Section 19733 or paragraph (1) of~~
38 ~~subdivision (b) of Section 19733.~~

39 ~~(d) (1) For purposes of computing the penalty imposed under~~
40 ~~paragraph (2) of subdivision (a), the amount of interest computed~~

1 under Section 19101, that would otherwise be used to compute
2 the penalty, shall be reduced by the amount of interest
3 attributable to any amounts that become due and payable after
4 the last day of the amnesty period specified in Section 19731,
5 where those additional amounts are the result of a regulation,
6 legal ruling of counsel, within the meaning of subdivision (b) of
7 Section 11340.9 of the Government Code, or a published federal
8 or California court decision that becomes final after the last day
9 of the amnesty period specified in Section 19731 that is
10 applicable for a taxable year beginning before January 1, 2003.

11 (2) The Franchise Tax Board shall implement this section in a
12 reasonable manner.

13 (e) The penalty imposed by paragraph (2) of subdivision (a) of
14 this section does not apply if the taxpayer paid, on or before the
15 last day of the amnesty period specified in Section 19731, at least
16 90 percent of the total tax for a taxable year. Total tax includes
17 any amounts that become due and payable after the last day of
18 the amnesty period.

19 (f) Article 3 (commencing with Section 19031), relating to
20 deficiency assessments, shall not apply with respect to the
21 assessment or collection of any penalty imposed by subdivision
22 (a).

23 (g) (1) Notwithstanding Chapter 6 (commencing with Section
24 19301), a taxpayer may not file a claim for refund or credit for
25 any amounts paid in connection with the penalty imposed in
26 subdivision (a), except as provided in paragraph (2).

27 (2) A taxpayer may file a claim for refund for amounts paid to
28 satisfy the penalty imposed under subdivision (a) on the grounds
29 that the failure of the Chief Counsel of the Franchise Tax Board,
30 or his or her designee, to abate the penalty, in whole or in part,
31 under the authority of subdivision (h) was an abuse of discretion.

32 (h) Only the Chief Counsel of the Franchise Tax Board, or his
33 or her designee, may abate all or any portion of a penalty
34 imposed under subdivision (a) if any one or more of the
35 following applies:

36 (1) The taxpayer demonstrates that the underpayment upon
37 which the penalty was based, or a portion thereof, was
38 attributable to the treatment of an item for which there was
39 substantial authority, within the meaning of Section 6662 of the
40 Internal Revenue Code and the regulations thereunder.

~~(2) The penalty imposed under this section, or a portion thereof, is based on an underpayment resulting from a change or correction by the Commissioner of Internal Revenue or other officer of the United States and the taxpayer was first contacted by the Internal Revenue Service concerning an examination of the return after the last day of the amnesty period specified in Section 19731.~~

~~(3) If taking into account all the facts and circumstances, it is against equity and good conscience to hold the taxpayer liable for the penalty imposed under this section (or any portion thereof).~~

~~(i) The State Board of Equalization's determination on an appeal from the action of the Franchise Tax Board on a claim for refund filed pursuant to paragraph (2) of subdivision (g) shall be limited to whether the failure of the Chief Counsel of the Franchise Tax Board, or his or her designee, to abate all or any portion of the penalty imposed under this section was an abuse of discretion.~~

~~(j) Notwithstanding Section 18415, the amendments made to this section by the act adding this subdivision shall apply to penalties imposed under paragraph (2) of subdivision (a) after March 31, 2005.~~

~~SEC. 5. Section 4.5 of this bill incorporates amendments to Section 19777.5 of the Revenue and Taxation Code proposed by this bill and AB 911, as amended June 20, 2005. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2005, (2) each bill amends Section 19777.5 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 911, in which case Section 4 of this bill shall not become operative.~~

~~SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:~~

~~To prevent taxpayers from being unfairly penalized under the amnesty program, it is necessary that this act take effect immediately.~~